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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BENNIE MATHIS,
11 CDCR #H-788220,

12 Plaintiff,

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14 vs.

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16 N. GRANNIS, et al.,
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19 Defendants.
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Civil No. 07-1850 WQH (AJB)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
IMPOSING NO INITIAL PARTIAL
FILING FEE AND GARNISHING
\$350 BALANCE FROM
PRISONER'S TRUST ACCOUNT
[Doc. No. 2]; AND**

**(2) DISMISSING ACTION FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(b)(ii) & 1915A(b)(1)**

22 Plaintiff, Bennie Mathis, a state inmate currently incarcerated at the Centinela State
23 Prison in Imperial, California and proceeding pro se, has filed a civil rights action pursuant to
24 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges that he was denied adequate medical
25 treatment by Centinela prison officials in violation of his Eighth Amendment rights. Plaintiff
26 did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he filed a Motion
27 to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2]

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I. Motion to Proceed IFP [Doc. No. 2]

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a prisoner seeking leave to proceed IFP must submit a "certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the six-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the average monthly balance in the account for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner must collect subsequent payments, assessed at 20% of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C. § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. *Andrews*, 398 F.3d at 1119. Plaintiff's trust account statement shows that he has no available funds from which to pay filing fees at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil action or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee."); *Taylor*, 281

1 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal
2 of a prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds available to
3 him when payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed
4 IFP [Doc. No. 2] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However,
5 the entire \$350 balance of the filing fees mandated shall be collected and forwarded to the Clerk
6 of the Court pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

7 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

8 **A. Standard**

9 The PLRA also obligates the Court to review complaints filed by all persons proceeding
10 IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused
11 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
12 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as
13 practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
14 provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion
15 thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from
16 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203
17 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443,
18 446 (9th Cir. 2000) (§ 1915A).

19 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
20 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is
21 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,
22 324 (1989). However 28 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing
23 an IFP or prisoner’s suit make and rule on its own motion to dismiss before effecting service of
24 the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection
25 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint
26 that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)
27 (discussing 28 U.S.C. § 1915A).

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1 “[W]hen determining whether a complaint states a claim, a court must accept as true all
 2 allegations of material fact and must construe those facts in the light most favorable to the
 3 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
 4 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, the Court’s
 5 duty to liberally construe a pro se’s pleadings, *see Karim-Panahi v. Los Angeles Police Dept.*,
 6 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important in civil rights cases.” *Ferdik v.*
 7 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

8 **B. 42 U.S.C. § 1983 Liability**

9 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
 10 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
 11 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
 12 United States. *See* 42 U.S.C. § 1983; *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122
 13 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

14 **C. Eighth Amendment Claim**

15 The Eighth Amendment, which prohibits “cruel and unusual punishments,” imposes a
 16 duty on prison officials to provide humane conditions of confinement and to take reasonable
 17 measures to guarantee the safety of the inmates. *Helling v. McKinney*, 509 U.S. 25, 31-33
 18 (1993). To state a constitutional claim for deliberate indifference to a serious medical need in
 19 violation of the Eighth Amendment, the prisoner must first demonstrate the existence of a serious
 20 medical condition of which the prison officials should have been aware. *Estelle v. Gamble*, 429
 21 U.S. 97, 104-05; *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled on*
 22 *other grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997). A “serious”
 23 medical need exists if the failure to treat a prisoner’s condition could result in further significant
 24 injury or the “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 104. “The
 25 existence of an injury that a reasonable doctor or patient would find important and worthy of
 26 comment or treatment; the presence of a medical condition that significantly affects an
 27 individual’s daily activities; or the existence of chronic or substantial pain are examples of
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1 indications that a prisoner has a ‘serious’ need for medical treatment.” *McGuckin*, 974 F.2d at
2 1059-60.

3 Here, the majority of Plaintiff’s claims appear to arise from the denial of prison officials
4 to provide Plaintiff with multivitamins. (Compl. at 3-5.) Plaintiff does not provide any facts
5 indicating the nature or severity of his illness. Plaintiff does not allege any facts to indicate that
6 he could suffer injury if his condition is not treated. Thus, as currently pleaded, Plaintiff fails
7 to provide sufficient facts to assert that he has a “serious” medical condition.

8 In addition, Plaintiff must also demonstrate that the named Defendants were deliberately
9 indifferent to his serious medical condition. “In order to show deliberate indifference, an inmate
10 must allege sufficient facts to indicate that prison officials acted with a culpable state of mind.”
11 *Wilson v. Seiter*, 501 U.S. 294, 302 (1991). A defendant must purposefully ignore or fail to
12 respond to a prisoner’s pain or medical need in order to establish deliberate indifference.
13 *McGuckin*, 974 F.2d at 1060. The indifference to medical needs also must be substantial;
14 inadequate treatment due to malpractice, or even gross negligence, does not amount to a
15 constitutional violation. *Estelle*, 429 U.S. at 106; *Wood v. Housewright*, 900 F.2d 1332, 1334
16 (9th Cir. 1990).

17 Here, Plaintiff fails to allege sufficient facts to show deliberate indifference. Plaintiff
18 alleges no facts to indicate that any named Defendant knew of, and disregarded, anything
19 regarding Plaintiff’s medical treatment. Accordingly, the Court finds that Plaintiff has failed to
20 state an Eighth Amendment inadequate medical care claim.

21 The Court finds that Plaintiff’s Complaint fails to state a section 1983 claim upon which
22 relief may be granted, and is therefore subject to dismissal pursuant to 28 U.S.C.
23 §§ 1915(e)(2)(b) & 1915A(b). Because it is not altogether certain that Plaintiff would be unable
24 to allege any additional facts related to the conditions under which he was injured, however, the
25 Court will provide Plaintiff with an opportunity to amend his pleading in light of the standards
26 set forth above. *See Lopez*, 203 F.3d at 1130-31.

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1 **III. Conclusion and Order**

2 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

3 1. Plaintiff's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2] is
4 **GRANTED**.

5 2. The Secretary of California Department of Corrections and Rehabilitation, or his
6 designee, shall collect from Plaintiff's prison trust account the \$350 balance of the filing fee
7 owed in this case by collecting monthly payments from the account in an amount equal to twenty
8 percent (20%) of the preceding month's income and forward payments to the Clerk of the Court
9 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).
10 ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
11 ASSIGNED TO THIS ACTION.

12 3. The Clerk of the Court is directed to serve a copy of this Order on James Tilton,
13 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
14 Sacramento, California 95814.

15 **IT IS FURTHER ORDERED** that:

16 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
17 §§ 1915(e)(2)(b)(ii) and (iii) and 1915A(b)(1) and (2). However, Plaintiff is **GRANTED** forty
18 five (45) days leave from the date this Order is "Filed" in which to file a First Amended
19 Complaint which cures all the deficiencies of pleading noted above. Plaintiff's Amended
20 Complaint must be complete in itself without reference to the superseded pleading. *See* S.D.
21 Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-alleged in the Amended
22 Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
23 1987). Further, if Plaintiff's Amended Complaint fails to state a claim upon which relief may
24 be granted, it may be dismissed without further leave to amend and may hereafter be counted
25 as a "strike" under 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir.
26 1996).

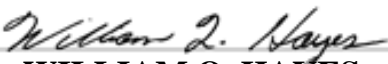
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1 5. The Clerk of the Court is directed to mail a Court approved form § 1983 complaint
2 to Plaintiff.

3 **IT IS SO ORDERED.**

4 DATED: October 16, 2007

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6 **WILLIAM Q. HAYES**
7 United States District Judge
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